

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5567 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMESHBHAI P VAGHELA

Versus

DIRECTOR OF CAMPUS

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Appearance:

MR HK RATHOD for Petitioners

MR SM MAZGAONKAR for Respondent No. 1, 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/02/98

ORAL JUDGEMENT

Petitioners before this Court are the employees of the respondent University (hereinafter referred to as "the University"). The petitioners have been working on Class III Post on daily wages since the year 1976, 1989 and 1987 respectively. It appears that the petitioners were appointed on daily wages by way of stop gap arrangement. In the year 1992, the University decided to fill in all the reserved posts which were vacant or were carried forward from year to year. A selection procedure, therefore, was started in the year 1992.

Alongwith the eligible candidates sponsored by the employment exchange office, existing employees of the university who were serving on daily wages were also invited to apply for the said posts. The petitioners too applied for regular appointment to Class III service. Interviews were held on 2nd and 3rd January 1993. Pursuant to the said interviews, select list was drawn for every category of the reserved class i.e. separate select list was drawn for scheduled caste candidates, scheduled tribe candidates, physically handicapped candidates and the Baxi Panch Candidates. The petitioners found their placement at serial No. 2, 3 and 4 on the select list of Baxi Panch candidates. It appears that some complaints were received by the Government in respect of the selections to be made by the University. Pending investigation into the said complaints, the Government under its communication dated 8th February, 1993 requested the Vice chancellor of the University not to operate the said select list. However, one Mr.D.C.Vanand who was selected and was placed at serial no. 6 on the select list for Baxi Panch candidate was serving as Class IV servant of the University and under the quota reserved for promotion of Class IV servants to Class III service, said Shri Vanand alongwith three others was promoted to Class III service under order dated 13th January, 1993.

Feeling aggrieved, the petitioners approached this Court by filing this petition and prayed that select list prepared on 3rd January, 1993 be operated and the appointments be given in order of merit. It appears that the factum that Shri Vanand was promoted and that he was not appointed pursuant to the selection held on 3rd January, 1993 was not brought to the notice of this Court. The select list drawn on 3rd January, 1993 was, under order of the Vice Chancellor of the University, ultimately cancelled on 29th July, 1993. However, on 13th August, 1993, the fact of cancellation of the select list was not brought to the notice of the Court. The Court admitted the petition to final hearing and made interim order directing that the appointments to the posts in questions should be made from the select list in the order mentioned therein and that the petitioners' service as daily wager shall not be terminated except in accordance with law.

It appears that pursuant to the aforesaid interim order, select list which was cancelled on 29th July, 1993 was operated by the Campus Director and under order dated 13th September, 1993 persons listed at serial no. 1 to 4 including the present petitioners on the select list of

Baxi Panch candidates were given appointment on probation for two years. On completion of the period of probation, under order dated 9th November, 1995, probation of the said persons has been terminated and they have been appointed on long term basis.

Mr. Rathod, the learned advocate appearing for the petitioners submits that in view of the appointment of the petitioners and their continuance on long term basis, grievance expressed by the petitioners stands substantially redressed and he, therefore, seeks leave to withdraw this petition. Mr. Mazgaonkar has contested the proposition made by Mr. Rathod. He has submitted that under interim order made on 13th August, 1993, this Court had not issued any mandatory direction to issue appointment orders and that in view of the cancellation of the select list, the petitioners should not have been appointed on 13th September, 1993 or any day thereafter. However, said appointments have been made by the then Campus Director (who has since expired) in connivance with the petitioners and fraud has been perpetrated upon the University. He, therefore, submits that the present petition requires to be decided on merits i.e. whether the petitioners had a right to appointment or not.

I do not accept the contention raised by Mr. Mazgaonkar. Once the petitioners have been given regular appointment and their grievance stands redressed, the petitioners have a right to withdraw their petition. If at all said appointments are made unlawfully, it should be open for the University to take appropriate action in accordance with law and the petitioners may challenge such action as and when taken by the University. However, that should not preclude the petitioners from withdrawing this petition at present.

In above view of the matter, leave to withdraw this petition is granted. Petition is dismissed as withdrawn. Rule is discharged. Interim relief is vacated. Parties shall bear their own costs.

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Vyas